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COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Agenda item 26

REPORT TO THE ECONOMIC AND SOCIAL COUNCIL ON THE FIFTY-FOURTH SESSION OF THE COMMISSION

DRAFT REPORT OF THE COMMISSION

Rapporteur: Mr. Roman KUZNIAR

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* Documents E/CN.4/1998/L.10 and addenda will contain the chapters of the report relating to the organization of the session and the various items on the agenda. Resolutions and decisions adopted by the Commission, as well as draft resolutions and decisions for action by, and other matters of concern to, the Economic and Social Council, will be contained in documents E/CN.4/1998/L.11 and addenda.

GE.98-11402 (E)

1998/1. Question of the violation of human rights in the occupied Arab territories, including Palestine

The Commission on Human Rights,

Guided by the purposes and principles of the Charter of the United Nations, as well as by the provisions of the Universal Declaration of Human Rights,

Guided also by the provisions of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights,

Taking into consideration the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and the provisions of Additional Protocol I thereto, and the Hague Convention IV of 1907,

Recalling the resolutions of the Security Council, the General Assembly and the Commission on Human Rights related to the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War to the Occupied Palestinian Territory, including Jerusalem, and other occupied Arab territories,

Recalling also the General Assembly resolutions on Israeli violations of human rights in the Occupied Palestinian Territory, including Jerusalem, occupied since 1967, and noting Assembly resolution ES-10/4 of 13 November 1997 in which the Assembly reiterated its recommendation that the High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War convene a conference on measures to enforce the Convention in the Occupied Palestinian Territory, including Jerusalem, and to ensure its respect in accordance with common article 1 of the Geneva Conventions,

Recalling further the provisions of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in June 1993 (A/CONF.157/23),

Taking note of the report (E/CN.4/1998/17) of the Special Rapporteur, Mr. Hannu Halinen, regarding his mission undertaken in accordance with Commission resolution 1993/2 A of 19 February 1993,

Taking note also of the reports of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and

Other Arabs of the Occupied Territories submitted to the General Assembly since 1968, including the latest (A/52/131 and Add.1 and Add.2),

Noting with great concern the continued Israeli refusal to abide by the resolutions of the Security Council, the General Assembly and the Commission on Human Rights calling upon Israel to put an end to the violations of human rights and affirming the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War to the Occupied Palestinian Territory, including Jerusalem, and other Arab territories occupied by Israel since 1967,

Gravely concerned at the stagnation of the peace process because of the contempt of the Government of Israel for the principles on which this process was based, and its refusal to carry out its commitments in line with the agreements it signed with the Palestine Liberation Organization,

Recalling all its previous resolutions on the subject, including the latest, resolution 1997/1 of 26 March 1997,

1. Condemns the continued violations of human rights in the Occupied Palestinian Territory, including East Jerusalem, in particular the continuation of acts of wounding and killing such as that which took place on 10 March 1998 when Israeli occupation soldiers shot dead three Palestinian workers and wounded nine others, one of them seriously, and the subsequent opening of fire on Palestinian civilians after the incidents of the following days, in addition to the detention of thousands of Palestinians without trial, the continuation of the confiscation of Palestinian lands, the extension and the establishment of Israeli settlements thereon, the confiscation of Palestinians' property and expropriation of their land, the demolition of Palestinian homes and the uprooting of fruit trees, and calls upon Israel to cease these acts immediately since these practices constitute a major obstacle in the way of peace;

2. Also condemns the opening of a tunnel under the Al Aqsa mosque, the continuation of the building of an Israeli settlement on Jabal Abu Ghenaim in Occupied East Jerusalem in addition to other settlements in the West Bank, the expropriation of Palestinian homes in Al-Amoud district in Jerusalem, the revocation of identity cards of the citizens of the Palestinian city of Jerusalem and forcing them to live outside their home with the aim of the

Judaization of Jerusalem, and calls upon the Government of Israel to close the tunnel and to put an end immediately to these practices;

3. Further condemns the use of torture against Palestinians during interrogation, which the Israeli High Court of Justice has legitimized, and calls upon the Government of Israel to refrain immediately from the current interrogation practices and to work on abolishing the above-mentioned legitimization;

4. Reaffirms that all the Israeli settlements in the Palestinian territories occupied since 1967, including East Jerusalem, are illegal and should be dismantled in order to achieve a just, permanent and comprehensive peace in the region of the Middle East;

5. Also reaffirms that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, is applicable to the Palestinian and other Arab territories occupied by Israel since 1967, including East Jerusalem, and considers any change in the geographical and demographic status of the city of East Jerusalem from its situation prior to the June 1967 war to be illegal and void;

6. Further reaffirms the great importance of the convening of a conference by the High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, in accordance with General Assembly resolution ES-10/4;

7. Calls upon Israel to cease immediately its policy of enforcing collective punishments, such as demolition of houses and closure of the Palestinian territory, measures which constitute flagrant violations of international law and international humanitarian law, endanger the lives of the Palestinians and also constitute a major obstacle in the way of peace;

8. Calls once more upon Israel, the occupying Power, to desist from all forms of violation of human rights in the Occupied Palestinian Territory, including East Jerusalem, and other occupied Arab territories, and to respect the bases of international law, the principles of international humanitarian law, its international commitments and the agreements it signed with the Palestine Liberation Organization;

9. Also calls upon Israel to withdraw from the Palestinian territories, including East Jerusalem, and the other Arab territories occupied since 1967, in accordance with the relevant resolutions of the United Nations and the Commission on Human Rights;

10. Requests the Secretary-General to bring the present resolution to the attention of the Government of Israel and all other Governments, the competent United Nations organs, the specialized agencies, regional intergovernmental organizations and international humanitarian organizations, to disseminate it on the widest possible scale, and to report on its implementation by the Government of Israel to the Commission on Human Rights at its fifty-fifth session;

11. Also requests the Secretary-General to provide the Commission on Human Rights with all United Nations reports issued between sessions of the Commission that deal with the conditions in which the citizens of the Palestinian and other occupied Arab territories are living under the Israeli occupation;

12. Decides to consider the question at its fifty-fifth session under the same agenda item, as a matter of high priority.

20th meeting
27 March 1998
[Adopted by a roll-call vote of 31 votes to 1 with 20 absentions. See chap. IV.]

1998/2. Human rights in the occupied Syrian Golan

The Commission on Human Rights,

Deeply concerned at the suffering of the Syrian citizens in the occupied Syrian Golan due to the violation of their fundamental and human rights since the Israeli military occupation of 1967,

Recalling Security Council resolution 497 (1981) of 17 December 1981,

Recalling also all relevant General Assembly resolutions, including the latest, resolution 52/68 of 10 December 1997, in which the Assembly, inter alia, called upon Israel to comply with Security Council resolution 497 (1981), to put an end to its practices violating the rights of the Syrian citizens in the occupied Syrian Golan and to put an end to its occupation of the occupied Syrian Golan,

Reaffirming once more the illegality of Israel's decision of 14 December 1981 to impose its laws, jurisdiction and administration on the occupied Syrian Golan, which has resulted in the effective annexation of that territory,

Reaffirming the principle of non-acquisition of territory by force in accordance with the Charter of the United Nations and the principles of International Law,

Taking note with deep concern of the report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories (A/52/131/Add.2) and, in this connection, deploring the Israeli settlement in the occupied Arab territories and regretting Israel's constant refusal to cooperate with and to receive the Special Committee,

Guided by the relevant provisions of the Charter of the United Nations, international law and the Universal Declaration of Human Rights, and reaffirming the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and the relevant provisions of the Hague Conventions of 1899 and 1907, on the occupied Syrian Golan,

Reaffirming the importance of the peace process which started in Madrid on the basis of Security Council resolutions 242 (1967), 338 (1973) and 425 (1978) and the principle of land for peace, which aims at the establishment of a just and comprehensive peace in the Middle East,

Expressing its concern about the stoppage of the peace process on the Syrian and Lebanese tracks, and hoping that the commitments and guarantees reached during the previous talks will be respected in order that the talks may resume as soon as possible on both tracks,

Reaffirming its previous relevant resolutions, the most recent being resolution 1997/2 of 26 March 1997,

1. Calls upon Israel, the occupying Power, to comply with the relevant resolutions of the General Assembly and of the Security Council, particularly resolution 497 (1981), in which the Council, inter alia, decided that the Israeli decision to impose its laws, jurisdiction and administration on the occupied Syrian Golan is null and void and without international legal effect, and demanded that Israel should rescind forthwith its decision;

2. Also calls upon Israel to desist from changing the physical character, demographic composition, institutional structure and legal status of the occupied Syrian Golan, and emphasizes that the displaced persons of the population of the occupied Syrian Golan must be allowed to return to their homes and to recover their properties;

3. Further calls upon Israel to desist from imposing Israeli citizenship and Israeli identity cards on the Syrian citizens in the occupied Syrian Golan and to desist from its repressive measures against them, and from all other practices mentioned in the report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories;

4. Determines that all legislative and administrative measures and actions taken or to be taken by Israel, the occupying Power, that purport to alter the character and legal status of the occupied Syrian Golan are null and void, constitute a flagrant violation of international law and of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and have no legal effect;

5. Calls once again upon Member States not to recognize any of the legislative or administrative measures and actions referred to in the present resolution;

6. Requests the Secretary-General to bring the present resolution to the attention of all Governments, the competent United Nations organs, the specialized agencies, regional intergovernmental organizations and international humanitarian organizations and to give it the widest possible publicity, and to report to the Commission on Human Rights at its fifty-fifth session;

7. Decides to include in the provisional agenda of its fifty-fifth session, as a matter of high priority, the item entitled "Question of the violation of human rights in the occupied Arab territories, including Palestine".

20th meeting
27 March 1998
[Adopted by a roll-call vote of 33 votes to 1, with 19 abstentions. See chap. IV.]

1998/3. Israeli settlements in the occupied Arab territories

The Commission on Human Rights,

Reaffirming that all member States have an obligation to promote and protect human rights and fundamental freedoms as stated in the Charter of the United Nations and as elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Mindful that Israel is a party to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable to Palestinian and all Arab territories occupied by Israel since 1967, including East Jerusalem,

Recalling its previous resolutions, most recently resolution 1997/3 of 26 March 1997, in which, inter alia, it reaffirmed the illegality of the Israeli settlements in the occupied territories,

1. Welcomes the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (E/CN.4/1998/17);

2. Expresses its grave concern

(a) At the Israeli settlement activities, including the expansion of the settlements, the installation of settlers in the occupied territories, the expropriation of land, the demolition of houses, the confiscation of property, the expulsion of local residents and the construction of bypass roads, which change the physical character and demographic composition of the occupied territories, including East Jerusalem, since they are illegal, constitute a violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and are a major obstacle to peace;

(b) At and strongly condemns all acts of terrorism, whilst calling upon all parties not to allow any acts of terrorism to affect the ongoing peace process negatively;

3. Calls upon the Government of Israel

(a) To comply fully with the previous Commission resolutions on the subject, most recently resolution 1997/3 of 26 March 1997;

(b) To match its stated commitment to the peace process with concrete actions to fulfil its obligations and cease completely its policy of expanding the settlements and related activities in the occupied territories, including East Jerusalem;

(c) To forgo and prevent any new installation of settlers in the occupied territories.

20th meeting
27 March 1998
[Adopted by a vote of 51 votes to 1, with no abstentions. See chap. IV.]

1998/4. Situation in occupied Palestine

The Commission on Human Rights,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Taking into consideration the provisions of the Declarations on the Granting of Independence to Colonial Countries and Peoples, adopted by the General Assembly in its resolution 1514 (XV) of 14 December 1960,

Guided by the provisions of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in June 1993 (A/CONF.157/23), and in particular Part I, paragraphs 2 and 3, relating to the right to self-determination of all peoples and especially those subject to foreign occupation,

Recalling Security Council resolutions 183 (1963) of 11 December 1963 and 218 (1965) of 23 November 1965, which affirmed the interpretation of the principle of self-determination as laid down in General Assembly resolution 1514 (XV),

Recalling also General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions which confirm and define the inalienable rights of the Palestinian

people, particularly their right to self-determination without external interference and to the establishment of their independent State on their national soil, especially Assembly resolutions ES-7/2 of 29 July 1980 and 37/86 E of 20 December 1982,

Reaffirming its previous resolutions in this regard, including the latest, resolution 1997/4 of 26 March 1997,

Bearing in mind the continued reports and recommendations of the Committee on the Exercise of the Inalienable Rights of the Palestinian People submitted to the Security Council and the General Assembly,

Reaffirming the right of the Palestinian people to self-determination in accordance with the Charter of the United Nations, the relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, as it is a jus cogens in international law,

Recalling that the foreign occupation by the armed forces of a State of the territory of another State constitutes an obstacle to and a grave violation of human rights according to Part I, paragraph 30, of the Vienna Declaration and Programme of Action, and an act of aggression and a crime against the peace and security of mankind according to General Assembly resolution 3314 (XXIX) of 14 December 1974,

Affirming that the peace process, which aims to achieve a just, comprehensive and lasting peace, aims at the same time to enable the Palestinian people to achieve their national rights and, principally, their right to self-determination free of external intervention as a basic condition for establishing the long-sought peace,

1. Reaffirms the inalienable right of the Palestinian people to self-determination without external interference;

2. Calls upon Israel to comply with its obligations under the Charter of the United Nations and the principles of international law, and to withdraw from the Occupied Palestinian Territory, including East Jerusalem, and the other Arab territories which it has occupied since 1967 by military force, in accordance with the relevant United Nations resolutions, so as to enable the Palestinian people to exercise their universally recognized right to self-determination;

3. Requests the Secretary-General to transmit the present resolution to the Government of Israel and all other Governments, to distribute it on the widest possible scale and to make available to the Commission on Human Rights, prior to the convening of its fifty-fifth session, all information pertaining to the implementation of the present resolution by the Government of Israel;

4. Decides to include in the provisional agenda of its fifty-fifth session the item entitled "The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation" and to consider the situation in occupied Palestine under that item, as a matter of high priority.

20th meeting
27 March 1998
[Adopted by a roll-call vote of 34 votes to 1, with 18 abstentions. See chap. VII.]

1998/5. Question of Western Sahara

The Commission on Human Rights,

Having considered in depth the question of Western Sahara,

Reaffirming the inalienable right of all peoples to self-determination and independence, in accordance with the principles set forth in the Charter of the United Nations and in General Assembly resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Recalling its resolution 1997/5 of 26 March 1997,

Recalling also the agreement in principle given on 30 August 1988 by the Kingdom of Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro to the proposals of the Secretary-General of the United Nations and the then Chairman of the Assembly of Heads of State and Government of the Organization of African Unity in the context of their joint mission of good offices,

Recalling further Security Council resolutions 658 (1990) of 27 June 1990 and 690 (1991) of 29 April 1991, by which the Council approved the settlement plan for Western Sahara,

Recalling all the Security Council and General Assembly resolutions relating to the question of Western Sahara,

Taking note with satisfaction of the entry into force of the ceasefire in Western Sahara in accordance with the proposal of the Secretary-General and stressing the importance it attaches to the maintenance of the ceasefire as an integral part of the settlement plan,

Reaffirming the responsibility of the United Nations towards the people of Western Sahara, as provided for in the settlement plan,

Taking note with satisfaction of the agreements reached by the two parties during their private direct talks aimed at the implementation of the settlement plan, and stressing the importance it attaches to a full, fair and faithful implementation of the settlement plan and the agreements aimed at its implementation,

Taking note of Security Council resolution 1131 (1997) of 29 September 1997,

Recalling that the General Assembly has examined the relevant chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (A/51/23 (part V), chap. IX),

Having also examined the report of the Secretary-General (A/52/364 and Add.1),

1. Takes note of the report of the Secretary-General;

2. Takes note with satisfaction of the agreements reached between the Kingdom of Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro for the implementation of the settlement plan during their direct private talks under the auspices of Mr. James Baker III, the Personal Envoy of the Secretary-General, and urges the parties to implement those agreements fully and faithfully;

3. Urges the two parties to continue their cooperation with the Secretary-General and his Personal Envoy and to refrain from undertaking anything that would undermine the implementation of the settlement plan and the agreements reached for its implementation;

4. Commends the Secretary-General and his Personal Envoy for their efforts in reaching these agreements as well as the two parties for the cooperation they have shown, and urges them to continue this cooperation in order to facilitate the speedy implementation of the settlement plan;

5. Reaffirms the responsibility of the United Nations towards the people of Western Sahara, as provided for in the settlement plan;

6. Reiterates its support for further efforts of the Secretary-General for the organization and the supervision by the United Nations, in cooperation with the Organization of African Unity, of a referendum for self-determination of the people of Western Sahara, in conformity with Security Council resolutions 658 (1990) and 690 (1991), by which the Council approved the settlement plan for Western Sahara;

7. Takes note of Security Council resolution 1131 (1997);

8. Notes that the General Assembly has requested the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to continue to consider the situation in Western Sahara, bearing in mind the positive ongoing implementation of the settlement plan, and to report thereon to the General Assembly at its fifty-third session;

9. Also notes that the General Assembly has invited the Secretary-General to submit to it at its fifty-third session a report on the application of its resolution 52/75 of 10 December 1997.

20th meeting
27 March 1998
[Adopted without a vote. See chap. VII.]

1998/6. The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

The Commission on Human Rights,

Noting General Assembly resolution 52/112 of 12 December 1997 and recalling its resolution 1995/5 of 17 February 1995,

Recalling all of its relevant resolutions, in which, inter alia, it condemned any State that permitted or tolerated the recruitment, financing, training, assembly, transit and use of mercenaries with the objective of overthrowing the Governments of States Members of the United Nations, especially those of developing countries, or of fighting against national liberation movements, and recalling also the relevant resolutions of the General Assembly, the Security Council, the Economic and Social Council and the Organization of African Unity,

Reaffirming the purposes and principles enshrined in the Charter of the United Nations concerning the strict observance of the principles of sovereign

equality, political independence, territorial integrity of States, self-determination of peoples, the non-use of force or threat of use of force in international relations and non-interference in the affairs within the domestic jurisdiction of States,

Reaffirming also that by virtue of the principle of self-determination, as developed in the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and that every State has the duty to respect this right in accordance with the provisions of the Charter,

Alarmed and concerned about the danger which the activities of mercenaries constitute to peace and security in developing countries, particularly in Africa and in small States,

Deeply concerned about the loss of life, the substantial damage to property and the negative effects on the policy and economies of affected countries resulting from mercenary international criminal activities,

Convinced that it is necessary for Member States to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly in 1989, and to develop and maintain international cooperation among States for the prevention, prosecution and punishment of mercenary activities,

Convinced also that, notwithstanding the way in which mercenaries or mercenary-related activities are used or the form they take to acquire some semblance of legitimacy, they are a threat to peace, security and the self-determination of peoples and an obstacle to the enjoyment of human rights by peoples,

1. Takes note of the report of the Special Rapporteur on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (E/CN.4/1998/31);

2. Reaffirms that the use of mercenaries and their recruitment, financing and trains are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations;

3. Urges all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to take necessary legislative measures to ensure that their territories and

other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to destabilize or overthrow the Government of any State or threaten the territorial integrity and political unity of sovereign States, or to promote secession;

4. Calls upon all States that have not yet done so to consider taking necessary action to sign or to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries;

5. Welcomes the cooperation extended by those countries that have invited the Special Rapporteur of the Commission on Human Rights on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination;

6. Also welcomes the adoption by some States of national legislation that restricts the use of mercenaries;

7. Decides to extend the mandate of the Special Rapporteur for three years and also decides that the Special Rapporteur, in carrying out his mandate, shall seek and receive credible and reliable information from Governments, specialized agencies and intergovernmental and non-governmental organizations;

8. Requests the Secretary-General to provide the Special Rapporteur with all necessary assistance;

9. Urges all States to cooperate fully with the Special Rapporteur in the fulfilment of his mandate;

10. Requests the Office of the United Nations High Commissioner for Human Rights, as a matter of priority, to publicize the adverse effects of mercenary activities on the right to self-determination and, when requested and where necessary, to render advisory services to States that are affected by the activities of mercenaries,

11. Requests the Secretary-General to invite Governments to make proposals towards a clearer legal definition of mercenaries;

12. Requests the Special Rapporteur to report, with specific recommendations, his findings on the use of mercenaries to undermine the right to self-determination to the Commission at its fifty-fifth session;

13. Decides to consider at its fifty-fifth session the question of the use of mercenaries as a means of violating human rights and impeding the

exercise of the right of peoples to self-determination under the agenda item entitled "The right of peoples to self-determination and its application to peoples under colonial or alien domination of foreign occupation".

20th meeting
27 March 1998
[Adopted by a roll-call vote of 35 votes to 9, with 8 abstentions. See chap. VII.]

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REPORT TO THE ECONOMIC AND SOCIAL COUNCIL ON THE FIFTY-FOURTH SESSION OF THE COMMISSION

Draft report of the Commission

Rapporteur: Mr. Roman Kuzniar

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1998/10. Fiftieth anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide

* Documents E/CN.4/1998/L.10 and addenda will contain the chapters of the report relating to the organization of the session and the various items on the agenda. Resolutions and decisions adopted by the Commission, as well as draft resolutions and decisions for action by, and other matters of concern to, the Economic and Social Council, will be contained in documents E/CN.4/1998/L.11 and addenda.

GE.98-11707 (E)

1998/7. Question of a draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms

The Commission on Human Rights,

Recalling its decision 1984/116 of 16 March 1984, by which it established an open-ended working group to draft a declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms,

Recalling also its subsequent resolutions, in particular resolution 1997/70 of 16 April 1997, in which it decided to continue its work with a view to adopting the draft declaration at its fifty-fourth session,

Recalling further that the World Conference on Human Rights recommended speedy completion and adoption of the draft declaration,

Conscious of the importance of the adoption of the draft declaration in the context of the fiftieth anniversary of the Universal Declaration of Human Rights,

1. Welcomes with deep appreciation the report of the open-ended working group set up by the Commission to draft a declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms (E/CN.4/1998/98) and, in particular, the fact that the working group was able to complete its task and to submit the text of the draft declaration to the Commission at its fifty-fourth session;

2. Approves the text of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, as contained in the annex to the present resolution;

3. Decides to consider this issue at its fifty-fifth session under the agenda item entitled "Further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission";

4. Recommends the following draft resolution to the Economic and Social Council for adoption:

"The Economic and Social Council,

"Noting Commission on Human Rights resolution 1998/.. of ... 1998, in which the Commission approved the text of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms (E/CN.4/1998/98, annex),

"1. Expresses its appreciation to the Commission on Human Rights for finalizing the draft declaration;

"2. Approves the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms as contained in the annex to the present resolution and recommends it to the General Assembly for adoption at its fifty-third session;

"3. Recommends that, after adoption by the General Assembly, the full text of the Declaration should be disseminated as widely as possible."

31st meeting
3 April 1998
[Adopted without a vote. See chap. XIX.]

Annex

Draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms

PREAMBLE

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter of the United Nations,

Acknowledging the important role of international cooperation for and the valuable work of individuals, groups and associations in contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity, and from refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are universal, indivisible and interdependent and interrelated, and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of these rights and freedoms,

Stressing that the primary responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for, and foster knowledge of, human rights and fundamental freedoms at the national and international levels,

Declares:

Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political as well as other fields and the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all these rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in this Declaration are effectively guaranteed.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed, and within which all activities referred to in this Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations nor as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations or groups;

(c) To communicate with non-governmental or intergovernmental organizations.

Article 6

Everyone has the right, individually and in association with others:

(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how these rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) As provided in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge of all human rights and fundamental freedoms;

(c) To study, discuss, form and hold opinions on the observance, both in law and practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to these matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles, and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of one's country and in the conduct of public affairs.

2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs, criticism and proposals for improving their functioning and to draw attention to any aspect of their work which may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in this Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of violation of these rights.

2. To this end, everyone whose rights or freedoms are allegedly violated, has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law, and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms; as well as enforcement of the eventual decision and award; all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, inter alia:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms by petitions or other appropriate means to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials, to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in

association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 10

No one shall participate, by act or failure to act where required, in violating human rights and fundamental freedoms, and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this Declaration.

In this connection, everyone is entitled, individually and in association with others, to be effectively protected under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States which result in violations of human rights and fundamental freedoms as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Article 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms, through peaceful means, in accordance with article 3 of this Declaration.

Article 14

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include, inter alia:

(a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the State's periodic reports to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institutions.

Article 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education, and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

Article 16

Individuals, non-governmental organizations and relevant institutions have an important role in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to further strengthen, inter alia, understanding, tolerance, peace and friendly relations

among nations and amongst all racial and religious groups, bearing in mind the various backgrounds of societies and communities, in which they carry out their activities.

Article 17

In the exercise of the rights and freedoms referred to in this Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 18

1. Everyone has duties towards and within the community in which alone the free and full development of his or her personality is possible.

2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

3. Likewise, they have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

Article 19

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in this Declaration.

Article 20

Nor shall anything in the present Declaration be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.

1998/8. Question of the death penalty

The Commission on Human Rights,

Recalling article 3 of the Universal Declaration of Human Rights, which affirms the right of everyone to life, article 6 of the International Covenant on Civil and Political Rights and articles 6 and 37 (a) of the Convention on the Rights of the Child,

Recalling General Assembly resolutions 2857 (XXVI) of 20 December 1971 and 32/61 of 8 December 1977 on capital punishment, as well as resolution 44/128 of 15 December 1989, in which the Assembly adopted and opened for signature, ratification and accession the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,

Recalling Economic and Social Council resolutions 1574 (L) of 20 May 1971, 1745 (LIV) of 16 May 1973, 1930 (LVIII) of 6 May 1975, 1984/50 of 25 May 1984, 1985/33 of 29 May 1985, 1989/64 of 24 May 1989, 1990/29 of 24 May 1990, 1990/51 of 24 July 1990 and 1996/15 of 23 July 1996,

Recalling also its resolution 1997/12 of 3 April 1997 in which the Commission expressed its conviction that abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights,

Welcoming the exclusion of capital punishment from the penalties that the International Criminal Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda are authorized to impose,

Welcoming the fact that several countries, while still keeping the death penalty in their penal legislation, are applying a moratorium on executions,

Referring to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1998/68 and Add.1-3), with respect to the Safeguards guaranteeing protection of the rights of those facing the death penalty, set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984,

Deeply concerned that several countries impose the death penalty in disregard of the limitations provided for in the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child,

Concerned also that several countries, in imposing the death penalty, do not take into account the Safeguards guaranteeing protection of the rights of those facing the death penalty,

1. Welcomes the report of the Secretary-General containing information on changes in law and practice concerning the death penalty worldwide and further positive developments reflected in that report (E/CN.4/1998/82 and Corr.1);

2. Calls upon all States parties to the International Covenant on Civil and Political Rights that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

3. Urges all States that still maintain the death penalty:

(a) To comply fully with their obligations under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, notably not to impose the death penalty for any but the most serious crimes, not to impose it for crimes committed by persons below eighteen years of age, to exclude pregnant women from capital punishment and to ensure the right to seek pardon or commutation of sentence;

(b) To observe the Safeguards guaranteeing protection of the rights of those facing the death penalty, set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984;

4. Calls upon all States that still maintain the death penalty:

(a) Progressively to restrict the number of offences for which the death penalty may be imposed;

(b) To establish a moratorium on executions, with a view to completely abolishing the death penalty;

(c) To make available to the public information with regard to the imposition of the death penalty;

5. Requests the Secretary-General to continue to submit to the Commission on Human Rights, in consultation with Governments, specialized agencies and intergovernmental and non-governmental organizations, a yearly supplement on changes in law and practice concerning the death penalty worldwide to his quinquennial report on capital punishment and implementation of the Safeguards guaranteeing protection of the rights of those facing the death penalty;

6. Decides to continue consideration of the matter at its fifty-fifth session under the same agenda item.

31st meeting
3 April 1998
[Adopted by a roll-call vote of 26 to 13, with 12 abstentions. See chap. XIII.]

1998/9. Status of the International Covenants on Human Rights

The Commission on Human Rights,

Recalling General Assembly resolution 52/116 of 12 December 1997, and its own decision 1997/104 of 3 April 1997,

Mindful that the International Covenants on Human Rights constitute the first all-embracing and legally binding international treaties in the field of human rights and, together with the Universal Declaration of Human Rights, form the core of the International Bill of Human Rights,

Having considered the report of the Secretary-General on the status of the International Covenants on Human Rights (E/CN.4/1998/83 and E/CN.4/1998/84),

Recalling the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and reaffirming that all human rights and fundamental freedoms are indivisible and interrelated and that the promotion and protection of one category of rights should never exempt or excuse States from the promotion and protection of the other rights,

Recognizing the important role of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights in the implementation of the International Covenants on Human Rights and the Optional Protocols to the International Covenant on Civil and Political Rights,

1. Reaffirms the importance of the International Covenants on Human Rights as major parts of international efforts to promote universal respect for and observance of human rights and fundamental freedoms;

2. Appeals strongly to all States that have not yet done so to become parties to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as to accede to the Optional Protocols to the International Covenant on Civil and Political Rights and to make the declaration provided for in its article 41;

3. Invites the United Nations High Commissioner for Human Rights to intensify systematic efforts to encourage States to become parties to the International Covenants on Human Rights and, through the programme of advisory services in the field of human rights, to assist such States, at their request, in ratifying or acceding to the Covenants and to the Optional Protocols to the International Covenant on Civil and Political Rights;

4. Emphasizes the importance of the strictest compliance by States parties with their obligations under the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and, where applicable, the Optional Protocols to the International Covenant on Civil and Political Rights;

5. Stresses the importance of avoiding the erosion of human rights by derogation, and underlines the necessity of strict observance of the agreed conditions and procedures for derogation under article 4 of the International Covenant on Civil and Political Rights, bearing in mind the need for States parties to provide the fullest possible information during states of emergency, so that the justification for the appropriateness of measures taken in these circumstances can be assessed;

6. Also stresses the importance of fully taking into account the gender perspective in the implementation of the International Covenants on Human Rights at the national level, including the national reports, and in the work of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights;

7. Encourages the States parties to consider limiting the extent of any reservations they lodge to the International Covenants on Human Rights, to formulate any reservations as precisely and narrowly as possible and to ensure that no reservation is incompatible with the object and purpose of the relevant treaty or otherwise contrary to international law;

8. Also encourages the States parties to review regularly any reservations made in respect of the provisions of the International Covenants on Human Rights with a view to withdrawing them;

9. Invites the Committees to identify specific needs of States parties that might be addressed through the advisory services and technical assistance programme of the Office of the High Commissioner for Human Rights, with the possible participation of members of the Committees where appropriate;

10. Welcomes the continuing efforts of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights to strive for uniform standards in the implementation of the provisions of the International Covenants on Human Rights, and appeals to other bodies dealing with similar human rights questions to respect those uniform standards, as expressed in the general comments of the Committees;

11. Takes note of General Comment No. 26 adopted by the Human Rights Committee and General Comment Nos. 7 and 8 adopted by the Committee on Economic, Social and Cultural Rights since the fifty-third session of the Commission;

12. Urges States parties to fulfil in good time such reporting obligations under the International Covenants on Human Rights as may be requested and in their reports to make use of gender-disaggregated data;

13. Also urges States parties to take duly into account, in implementing the provisions of the International Covenants on Human Rights, the observations made at the conclusion of the consideration of their reports by the Human Rights, Committee and by the Committee on Economic, Social and Cultural Rights, as well as the views adopted by the Human Rights Committee under the first Optional Protocol to the International Covenant on Civil and Political Rights;

14. Invites States parties to give particular attention to the dissemination at the national level of the reports they have submitted to the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, the summary records relating to the examination of those reports by the Committees and the observations made by the Committees at the conclusion of the consideration of the reports;

15. Encourages once again all Governments to publish the texts of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocols to the International Covenant on Civil and Political Rights in as many local languages as possible and to distribute them and make them known as widely as possible in their territories;

16. Requests the Secretary-General to consider ways and means of assisting States parties to the International Covenants on Human Rights in the preparation of their reports, including seminars or workshops at the national level for the purpose of training government officials engaged in the

preparation of such reports, and the exploration of other possibilities available under the regular programme of advisory services in the field of human rights;

17. Also requests the Secretary-General to ensure that the Office of the High Commissioner for Human Rights effectively assists the Human Rights Committee and the Committee on Economic, Social and Cultural Rights in the implementation of their respective mandates, including by the provision of adequate Secretariat staff resources;

18. Further requests the Secretary-General to submit to the Commission, at its fifty-fifth and fifty-sixth sessions, a report on the status of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocols to the International Covenant on Civil and Political Rights, including all reservations and declarations;

19. Decides to consider the question at its fifty-fifth session under the item entitled "Status of the International Covenants on Human Rights".

31st meeting
3 April 1998

[Adopted without a vote. See chap. XIII.]

1998/10. Fiftieth anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide

The Commission on Human Rights,

Guided by the principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, as well as other relevant international instruments of human rights,

Recalling that the General Assembly, in adopting the Universal Declaration of Human Rights on 10 December 1948, recognized the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

Recalling that the General Assembly, in adopting the Convention on the Prevention and Punishment of the Crime of Genocide on 9 December 1948, recognized genocide as an odious scourge which had inflicted great losses on humanity and was convinced that international cooperation was required to facilitate the speedy prevention and punishment of the crime of genocide,

Concerned that despite the efforts of the international community, many thousands of innocent human beings continue to be victims of genocide,

Recalling the adoption by the General Assembly of resolution 96 (I) of 11 December 1946 in which it declared genocide to be a crime under international law, contrary to the spirit and aims of the United Nations,

Taking into consideration the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 26 November 1968,

Considering that the fiftieth anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide provides a new opportunity for the international community to draw the attention of all States to the significance of the Convention and to invite them to redouble their efforts for the prevention and punishment of the crime of genocide,

1. Reaffirms the significance of the Convention on the Prevention and Punishment of the Crime of Genocide as an effective international instrument for the punishment of the crime of genocide;

2. Expresses its appreciation to all States that have ratified or acceded to the Convention on the Prevention and Punishment of the Crime of Genocide;

3. Invites States that have not yet ratified or acceded to the Convention on the Prevention and Punishment of the Crime of Genocide to consider doing so;

4. Calls upon all States to increase and intensify their activities aimed at the full implementation of the provisions of the Convention.

31st meeting
3 April 1998

[Adopted without a vote. See chap. XIII.]

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Fifty-fourth session
Agenda item 26

REPORT TO THE ECONOMIC AND SOCIAL COUNCIL ON THE FIFTY-FOURTH SESSION OF THE COMMISSION

DRAFT REPORT OF THE COMMISSION

Rapporteur: Mr. Roman KUZNIAR

GE.98-12112 (E)

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* Documents E/CN.4/1998/L.10 and addenda will contain the chapters of the report relating to the organization of the session and the various items on the agenda. Resolutions and decisions adopted by the Commission, as well as draft resolutions and decisions for action by, and other matters of concern to, the Economic and Social Council, will be contained in documents E/CN.4/1998/L.11 and addenda.

1998/11. Human rights and unilateral coercive measures

The Commission on Human Rights,

Recalling the purposes and the principles of the Charter of the United Nations,

Reaffirming the pertinent principles and provisions contained in the Charter of Economic Rights and Duties of States proclaimed by the General Assembly in its resolution 3281 (XXIX) of 12 December 1974, in particular article 32 which declares that no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights,

Recalling its resolution 1997/7 of 3 April 1997 and noting General Assembly resolution 52/120 of 12 December 1997,

Recognizing the universal, indivisible, interdependent and interrelated character of all human rights and, in this regard, reaffirming the right to development as an integral part of all human rights,

Recalling that the World Conference on Human Rights called upon States to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impedes the full realization of all human rights,

Deeply concerned that, despite the recommendations adopted on this issue by the General Assembly and United Nations conferences and contrary to general international law and the Charter of the United Nations, unilateral coercive measures continue to be promulgated and implemented with all their negative implications for the socio-humanitarian activities of developing countries, including their extraterritorial effects, thereby creating additional obstacles to the full enjoyment of all human rights by peoples and individuals,

1. Calls once again upon all States to refrain from adopting or implementing unilateral measures not in accordance with international law and the Charter of the United Nations, in particular those of a coercive nature with extraterritorial effects, which create obstacles to trade relations among States, thus impeding the full realization of the rights set forth in the Universal Declaration of Human Rights and other international human rights instruments, in particular the right of individuals and peoples to development;

2. Rejects the application of such measures as tools for political or economic pressure against any country, particularly against developing countries, because of their negative effects on the realization of all human rights of vast sectors of their populations, inter alia, children, women and the elderly;

3. Reaffirms, in this context, the right of all peoples to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development;

4. Also reaffirms that essential goods such as food and medicines should not be used as tools for political coercion, and that in no case may a people be deprived of its own means of subsistence;

5. Endorses and reaffirms the criteria of the Working Group on the Right to Development according to which unilateral coercive measures are one of the obstacles to the implementation of the Declaration on the Right to Development;

6. Welcomes and endorses the recommendation made by the Intergovernmental Group of Experts on the Right to Development, according to which States should avoid the unilateral imposition of coercive economic measures and extraterritorial application of domestic laws which run counter to the principles of free trade and hamper the development of developing countries, included among its suggestions for a global strategy for the promotion and implementation of the right to development (see E/CN.4/1998/29);

7. Decides to give due consideration to the negative impact of unilateral coercive measures in its task concerning the implementation of the right to development;

8. Requests:

(a) The United Nations High Commissioner for Human Rights, in discharging her functions in relation to the promotion, realization and protection of the right to development, to pay due attention and give urgent consideration to the present resolution;

(b) The Secretary General to bring the present resolution to the attention of all Member States and seek their views and information on the implications and negative effects of unilateral coercive measures on their populations, and to submit a report thereon to the Commission on Human Rights at its fifty-fifth session;

9. Decides to examine this question, on a priority basis, at its fifty-fifth session under the same agenda item.

38th meeting
9 April 1998

[Adopted by a roll-call vote of 37 votes to 7 with 8 abstentions. See chap. V.]

1998/12. Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

The Commission on Human Rights,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and the Vienna Declaration and Programme of Action, particularly on the question of the human rights to life, to good health and to a sound environment for every individual,

Recalling its resolutions 1997/9 of 3 April 1997, 1996/14 of 11 April 1996, 1995/81 of 8 March 1995, 1993/90 of 10 March 1993, 1991/47 of 5 March 1991, 1990/43 of 6 March 1990 and 1989/42 of 6 March 1989,

Recalling also General Assembly resolutions 46/126 of 17 December 1991, 45/13 of 7 November 1990, 44/226 of 22 December 1989, 43/212 of 20 December 1988, and 42/183 of 11 December 1987 and Economic and Social Council decision 1995/288 of 25 July 1995,

Recalling further debates at the regional level, specifically resolution 1153 (XLVIII) of 25 May 1988 of the Council of Ministers of the Organization of African Unity declaring that the dumping of toxic wastes in the continent was a crime against Africa and the African people,

Affirming that the illicit movement and dumping of toxic and dangerous substances and wastes constitute a serious threat to the human rights to life and health of individuals, particularly in developing countries that do not have the technologies to process them,

Reaffirming that the international community must treat all human rights in a fair and equal manner, on the same footing and with the same emphasis,

Reaffirming also General Assembly resolution 50/174 of 22 December 1995 on strengthening of United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity,

Mindful of the call by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, on all States to adopt and vigorously implement existing conventions relating to the dumping of toxic and dangerous products and wastes and to cooperate in the prevention of illicit dumping,

Aware of the increasing rate of illicit movement and dumping by transnational corporations and other enterprises from industrialized countries of hazardous and other wastes in African and other developing countries that do not have the national capacity to deal with them in an environmentally sound manner which constitutes a serious threat to the human rights to life, good health and a sound environment for everyone,

Aware also that many developing countries do not have the national capacities and technologies to process such wastes in order to eradicate or diminish their adverse effects on the human rights to life and health,

1. Takes note of the progress report of the Special Rapporteur (E/CN.4/1998/10/ and Add.1) and, in particular, the conclusions and recommendations contained therein;

2. Welcomes the report of the Special Rapporteur on her mission to Africa (E/CN.4/1998/10/Add.2) and, in particular, expresses its appreciation to the Governments of Ethiopia and South Africa for the cooperation extended to the Special Rapporteur during her visit to those countries;

3. Categorically condemns the increasing rate of dumping of toxic and dangerous products and wastes in developing countries, which adversely affects the human rights to life and health of individuals in those countries;

4. Reaffirms that illicit traffic and dumping of toxic and dangerous products and wastes constitute a serious threat to the human rights to life, health and a sound environment of every individual;

5. Urges all Governments to take legislative and other appropriate measures with a view to preventing illegal international trafficking in toxic and hazardous products and wastes;

6. Invites the United Nations Environment Programme, the secretariat for the Basel Convention on the control of Transboundary Movements of Hazardous Wastes and Their Disposal, the Commission on Sustainable Development, the International Register of Potentially Toxic Chemicals, the Food and Agriculture Organization of the United Nations, the International Labour Organization, the World Health Organization and the Organization of African Unity and other regional organizations to intensify their coordination

and international cooperation and technical assistance on environmentally sound management of toxic chemicals and hazardous wastes, including the question of their transboundary movement;

7. Takes note of the decision adopted at the Fourth Meeting of the Conference of the Parties to the Convention, held in Kuching, Malaysia from 23 to 27 February 1998, regarding the illegal traffic in hazardous wastes which emphasized the need for the parties to cooperate with each other and with the secretariat on alleged cases of illegal traffic, and also welcomes the negotiations towards the adoption of a new convention on international trade in hazardous chemicals and pesticides;

8. Expresses its appreciation to the relevant United Nations agencies, in particular the United Nations Environment Programme and the secretariat for the Basel Convention, for the support extended to the Special Rapporteur, and urges them and the international community to continue to give her the necessary support to enable her to discharge her mandate;

9. Urges the international community and the relevant United Nations bodies, in particular the United Nations Environment Programme and the secretariat for the Basel Convention, to give appropriate support to the developing countries, upon their request, in their efforts to implement the provisions of existing international and regional instruments controlling the transboundary movement and dumping of toxic and dangerous products and wastes in order to protect and promote the human rights to life and good health of all;

10. Decides to renew the mandate of the Special Rapporteur for a period of three years in order that she may continue to undertake, in consultation with the relevant United Nations bodies and organizations and the secretariats of relevant international conventions, a global multidisciplinary and comprehensive study of existing problems of and solutions to illicit traffic in and dumping of toxic and dangerous products and wastes, in particular in developing countries, with a view to making concrete recommendations and proposals on adequate measures to control, reduce and eradicate these phenomena;

11. Requests the Special Rapporteur to continue to consult all relevant United Nations bodies, organizations and secretariats, in particular the Chemical Division of the United Nations Environment Programme, the Food

and Agriculture Organization of the United Nations and the secretariat for the Basel Convention, and to take duly into account the progress made in other forums and identify loopholes;

12. Reiterates its request to the Special Rapporteur, in accordance with her mandate, to include in her next report to the Commission comprehensive information on persons killed, maimed or otherwise injured in the developing countries through this heinous act;

13. Encourages the Special Rapporteur, in accordance with her mandate and with the support and assistance of the Office of the High Commissioner for Human Rights, to continue to provide Governments with an appropriate opportunity to respond to allegations transmitted to her and reflected in her report, and to have their observations reflected in her report to the Commission;

14. Urges the Secretary-General to make all necessary resources available to the Special Rapporteur to enable her to carry out her mandate successfully and, in particular, to provide her with adequate financial and human resources, including administrative support;

15. Decides to continue consideration of the question of the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights at its fifty-fifth session under the agenda item entitled: "Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights".

38th meeting
9 April 1998
[Adopted by a roll-call vote of 33 votes to 14 with 6 abstentions. See chap. V.]

1998/13. Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the International Decade of the World's Indigenous People

The Commission on Human Rights,

Recalling its previous resolutions on the Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the International Decade of the World's Indigenous People, in particular resolution 1997/32 of 11 April 1997,

Recalling also Economic and Social Council resolution 1982/34 of 7 May 1982, in which the Council authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to establish annually a working group on indigenous populations with the mandate to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous people, giving special attention to the evolution of standards concerning the rights of indigenous people,

Affirming its recognition of the value and diversity of the cultures and forms of social organization of indigenous people, and that the development of indigenous people within their countries will contribute to the socio-economic, cultural and environmental advancement of all the countries of the world,

Recalling that the goal of the International Decade of the World's Indigenous People is to strengthen international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, development, education and health, and that the theme of the Decade is "Indigenous people: partnership in action",

Recognizing the importance of consultation and cooperation with indigenous people in planning and implementing the programme of activities for the Decade, the need for adequate financial support from the international community, including support from within the United Nations and the specialized agencies, and the need for adequate coordination and communication channels,

I

Report of the Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

1. Takes note of the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its forty-ninth session (E/CN.4/1998/2-E/CN.4/Sub.2/1997/50) and of the report of the Working Group on its fifteenth session (E/CN.4/Sub.2/1997/14);

2. Urges the Working Group to continue its comprehensive review of developments and of the diverse situations and aspirations of the world's indigenous people, and welcomes its proposal to highlight specific themes of

the International Decade of the World's Indigenous People at its future sessions, including giving priority at its sixteenth session to the theme of education and language;

3. Invites the Working Group to take into account in its deliberations on developments pertaining to the promotion and protection of the human rights of indigenous people the work, within the framework of their respective mandates, of all thematic special rapporteurs, special representatives, independent experts, working groups and expert seminars as it pertains to the situation of indigenous people;

4. Recommends to the Economic and Social Council that the Working Group be authorized to meet for five working days prior to the fiftieth session of the Sub-Commission;

5. Invites the Working Group to continue its consideration of ways in which the expertise of indigenous people can contribute to the work of the Working Group, and encourages initiatives by Governments, organizations of indigenous people and non-governmental organizations to ensure the full participation of indigenous people in the activities related to the tasks of the Working Group;

6. Requests the Secretary-General:

(a) To provide adequate resources and assistance to the Working Group in the discharge of its tasks, including adequate dissemination of information about the activities of the Working Group to Governments, specialized agencies, non-governmental organizations and organizations of indigenous people, in order to encourage the widest possible participation in its work;

(b) To transmit the reports of the Working Group to Governments, organizations of indigenous people and intergovernmental and non-governmental organizations, as soon as possible, for specific comments and suggestions;

7. Appeals to all Governments, organizations and individuals in a position to do so to consider contributing to the United Nations Voluntary Fund for Indigenous Populations;

II

International Decade of the World's Indigenous People

8. Takes note of the report of the United Nations High Commissioner for Human Rights (E/CN.4/1998/107);

9. Invites the Working Group on Indigenous Populations to continue its review of activities undertaken during the International Decade of the

World's Indigenous People, and encourages Governments and intergovernmental and non-governmental organizations to provide information on the implementation of the goals of the Decade, in accordance with paragraph 16 of the annex to General Assembly resolution 50/157 of 21 December 1995;

10. Welcomes the affirmation by the General Assembly that a major objective of the Decade is the adoption of a declaration on the rights of indigenous people and its recognition that among the important objectives of the Decade is the consideration of the possible establishment of a permanent forum for indigenous people in the United Nations system;

11. Requests the High Commissioner for Human Rights to consider organizing, taking into account the United Nations Decade for Human Rights Education and the priority to be given, including to education and language, at the sixteenth session of the Working Group on Indigenous Populations, and recognizing the importance of strengthening the capacity of indigenous people to develop their own solutions to their problems, a workshop for research and higher education institutions focusing on indigenous issues in education, to improve exchange of information between such institutions and to encourage future cooperation, in consultation with indigenous people and in collaboration with the United Nations Educational, Scientific and Cultural Organization and other relevant United Nations bodies;

12. Requests the High Commissioner for Human Rights, in her capacity as coordinator of the Decade, to submit an updated annual report reviewing activities within the United Nations system under the programme of activities for the Decade to the Commission on Human Rights at its fifty-fifth session under the agenda item entitled "Indigenous issues", in accordance with the request by the General Assembly to the Secretary-General;

13. Emphasizes the important role of international cooperation in promoting the goals and activities of the Decade and the rights, well-being and sustainable development of indigenous people;

14. Encourages Governments to support the Decade by contributing to the Voluntary Fund for the Decade;

15. Also encourages Governments, as appropriate, recognizing the importance of action at the national level for the implementation of the goals and activities of the Decade, to support the Decade, in consultation with indigenous people, by:

(a) Preparing relevant programmes, plans and reports in relation to the Decade and establishing national committees or other mechanisms involving indigenous people to ensure that the objectives and activities of the Decade are planned and implemented on the basis of full partnership with indigenous people;

(b) Seeking means of giving indigenous people greater responsibility for their own affairs and an effective voice in decisions on matters which affect them;

(c) Identifying resources for activities designed to implement the goals of the Decade;

16. Appeals to intergovernmental and non-governmental organizations to support the Decade by identifying resources for activities designed to implement the goals of the Decade, in cooperation with indigenous people;

17. Encourages Governments to consider contributing, as appropriate, in support of the achievement of the goals of the Decade, to the Fund for the Development of Indigenous Peoples of Latin America and the Caribbean;

18. Recommends that the High Commissioner for Human Rights, when developing programmes within the framework of the International Decade of the World's Indigenous People and the United Nations Decade for Human Rights Education, give due regard to the development of human rights training for indigenous people;

19. Encourages the High Commissioner for Human Rights to cooperate with the Department of Public Information in preparing and disseminating information on the International Decade of the World's Indigenous People, taking due care to portray accurately the information regarding indigenous people;

20. Invites the United Nations financial and development institutions, operational programmes and specialized agencies, in accordance with the existing procedure of their governing bodies:

(a) To give increased priority and resources to improving the conditions of indigenous people, with particular emphasis on the needs of these people in developing countries, including through the preparation of specific programmes of action for the implementation of the goals of the Decade, within their areas of competence;

(b) To launch special projects, through appropriate channels and in collaboration with indigenous people, for strengthening their community-level initiatives, and to facilitate the exchange of information and expertise among indigenous people and other relevant experts;

(c) To designate focal points or other mechanisms for coordination with the High Commissioner for Human Rights of activities relating to the Decade;

21. Decides to consider the International Decade of the World's Indigenous People at its fifty-fifth session under the agenda item entitled "Indigenous issues".

38th meeting
9 April 1998

[Adopted without a vote. See chap. XXIII.]

1998/14. Working Group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of General Assembly resolution 49/214 of 23 December 1994

The Commission on Human Rights,

Bearing in mind General Assembly resolution 47/75 of 14 December 1992 and Part II, paragraph 28, of the Vienna Declaration and Programme of Action (A/CONF.157/23),

Reaffirming its resolution 1995/32 of 3 March 1995, in which it established an open-ended inter-sessional working group with the sole purpose of elaborating a draft declaration, considering the draft contained in the annex to resolution 1994/45 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, entitled "Draft United Nations declaration on the rights of indigenous peoples", for consideration and adoption by the General Assembly within the International Decade of the World's Indigenous People,

Reaffirming in particular that the invitation contained in that resolution was addressed to organizations of indigenous people seeking authorization to participate in the working group,

Recognizing that organizations of indigenous people have special knowledge and understanding of the current situation of the world's indigenous people and their human rights needs,

Recalling General Assembly resolution 49/214 of 23 December 1994, in which the Assembly encouraged the Commission to consider the draft declaration

with the participation of representatives of indigenous people, on the basis of and in accordance with appropriate procedures to be determined by the Commission,

Welcoming the progress made in the process of drafting a declaration on the rights of indigenous people, and emphasizing the importance and special nature of such a draft declaration as an instrument specifically for promoting the rights of indigenous people,

Recalling the need for the working group to consider all aspects of the draft declaration, including its scope of application,

1. Takes note of the report of the working group (E/CN.4/1998/106 and Corr.1) and welcomes the continuation and positive nature of the deliberations of the working group, particularly the measures taken to ensure effective input by organizations of indigenous people;

2. Expresses its appreciation for the work of the Economic and Social Council in considering applications from organizations of indigenous people to participate in the working group under the procedures set out in the annex to Commission on Human Rights resolution 1995/32;

3. Welcomes the decisions of the Economic and Social Council approving the participation of organizations of indigenous people in the work of the working group, and urges the Council to process all pending applications as soon as possible, taking strictly into account the procedures set out in the annex to Commission on Human Rights resolution 1995/32;

4. Recommends that the working group meet for ten working days prior to the fifty-fifth session of the Commission on Human Rights, the cost of the meeting to be met from within existing resources;

5. Encourages organizations of indigenous people which are not already registered to participate in the working group and which wish to do so to apply for authorization in accordance with the procedures set out in the annex to Commission on Human Rights resolution 1995/32;

6. Requests the working group to submit a progress report for consideration by the Commission on Human Rights at its fifty-fifth session under the agenda item entitled "Indigenous Issues";

7. Recommends the following draft resolution to the Economic and Social Council for adoption:

"The Economic and Social Council,

"Taking note of Commission on Human Rights resolution 1998/14 of 9 April 1998,

"1. Authorizes the open-ended inter-sessional working group of the Commission on Human Rights established in accordance with Commission resolution 1995/32 of 3 March 1995 to meet for a period of ten working days prior to the fifty-fifth session of the Commission, the costs of the meeting to be met from within existing resources;

"2. Requests the Secretary-General to extend all necessary facilities, from within existing United Nations resources, to the working group for its meetings."

38th meeting
9 April 1998
[Adopted without a vote. See chap. XXIII.]

1998/15. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The Commission on Human Rights,

Reaffirming once more the permanent validity of the principles and standards embodied in the principal instruments regarding the international protection of human rights, in particular the Universal Declaration of Human Rights, the International Covenants on Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child,

Bearing in mind the principles and standards established within the framework of the International Labour Organization and the importance of the task carried out in connection with migrant workers and their families in other specialized agencies and in various United Nations bodies,

Concerned at the situation of migrant workers and members of their families and at the marked increase in migratory movements that has occurred, especially in certain parts of the world,

Underlining the importance of the creation of conditions to foster greater harmony and tolerance between migrant workers and the rest of the society of the State in which they reside, with the aim of eliminating the growing manifestations of racism and xenophobia taking place in segments of many societies and perpetrated by individuals or groups against migrant workers,

Recalling General Assembly resolution 45/158 of 18 December 1990, by which the Assembly adopted and opened for signature, ratification and accession the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, contained in the annex to the resolution,

Considering that the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights (A/CONF.157/23) urges all States to guarantee the protection of all migrant workers and their families and invites them to consider the possibility of signing and ratifying the Convention at the earliest possible time,

1. Expresses its deep concern at the growing manifestations of racism, xenophobia and other forms of discrimination and inhuman and degrading treatment against migrant workers in different parts of the world;

2. Urges countries of destination to review and adopt, as appropriate, measures to prevent the excessive use of force and to ensure that their police forces and competent migration authorities comply with the basic standards relating to the decent treatment of migrant workers and their families, inter alia, through the organization of training courses on human rights;

3. Takes note of the report of the Secretary-General on the status of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (E/CN.4/1998/75), and welcomes the fact that some Member States have recently ratified and acceded to the Convention;

4. Calls upon all Member States to consider the possibility of signing and ratifying or acceding to the Convention as a matter of priority, and expresses the hope that this international instrument will enter into force at an early date;

5. Requests the Secretary-General to provide all facilities and assistance necessary for the active promotion of the Convention, through the World Public Information Campaign for Human Rights and the programme of advisory services in the field of human rights;

6. Welcomes the launching of the global campaign for entry into force of the Convention, and invites organizations and agencies of the United Nations system, as well as intergovernmental and non-governmental organizations, to continue and intensify their efforts with a view to disseminating information on and promoting the Convention;

7. Requests the Secretary-General to submit to the Commission at its fifty-fifth session a report on the status of the Convention and on the efforts made by the Secretariat to promote the Convention and the protection of the rights of migrant workers;

8. Decides to include in the provisional agenda of its fifty-fifth session the item entitled "Measures to improve the situation and ensure the human rights and dignity of all migrant workers".

38th meeting
9 April 1998
[Adopted without a vote. See chap. XI.]

1998/16. Migrants and human rights

The Commission on Human Rights,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Affirming that every State party to the International Covenant on Civil and Political Rights must ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in that Covenant,

Reaffirming that every State party to the International Covenant on Economic, Social and Cultural Rights must undertake to guarantee that the rights enunciated in that Covenant will be exercised without discrimination of any kind, including as to national origin,

Deeply concerned at the increasing manifestations of racism, xenophobia and other forms of discrimination and inhuman and degrading treatment against migrants in different parts of the world,

Bearing in mind the situation of vulnerability in which migrants frequently find themselves, owing, among other things, to their absence from their State of origin and to the difficulties they encounter because of differences of language, customs and culture,

Considering that there is a need to make further efforts to improve the situation and ensure the human rights and dignity of migrants,

Recalling its resolution 1997/15 of 3 April 1997,

1. Acknowledges that the principles and standards embodied in the Universal Declaration of Human Rights apply to everyone, including migrants;

2. Requests States, in conformity with their respective constitutional systems, the Universal Declaration of Human Rights and the international instruments to which they are party, which may include the International Covenants on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and other applicable international human rights instruments, effectively to promote and protect the human rights of all migrants;

3. Takes note of the report of the working group of intergovernmental experts on the human rights of migrants (E/CN.4/1998/76);

4. Notes with appreciation that the questionnaire submitted by the working group of intergovernmental experts received, in a short period of time, an unprecedentedly large number of responses from Governments, clearly indicating great interest on the part of the international community in the effective realization of the human rights of migrants and the need to improve knowledge on the obstacles to the realization of those rights;

5. Decides to reconvene the working group of intergovernmental experts, on the same basis, in order that it may fulfil its mandate as set out in paragraph 3 of Commission resolution 1997/15, to meet for two periods of five working days prior to the fifty-fifth session of the Commission;

6. Requests the working group of intergovernmental experts to submit its report to the Commission on Human Rights at its fifty-fifth session under the appropriate agenda item.

38th meeting
9 April 1998
[Adopted without a vote. See chap. XI.]

1998/17. Violence against women migrant workers

The Commission on Human Rights,

Recalling all previous resolutions on violence against women migrant workers adopted by the General Assembly, the Commission on the Status of Women, the Commission on Crime Prevention and Criminal Justice and the Commission on Human Rights, as well as the Declaration on the Elimination of Violence against Women,

Affirming the outcome of the World Conference on Human Rights, the International Conference on Population and Development, the World Summit for Social Development and the Fourth World Conference on Women, specifically as they pertain to women migrant workers,

Emphasizing the need for accurate, objective and comprehensive information, as well as for a wide exchange of experiences and lessons learned by individual countries in protecting and promoting the rights and welfare of women migrant workers for policy formulation and joint action,

Noting the large numbers of women from developing countries and from some countries with economies in transition who continue to venture forth to more affluent countries in search of a living for themselves and their families as a consequence of, inter alia, poverty, unemployment and other socio-economic conditions, and acknowledging the duty of sending States to work for conditions that provide employment and security to their citizens,

Concerned by the continuing reports of grave abuses and acts of violence committed against the persons of women migrant workers by some employers in some host countries,

Encouraged by some measures adopted by some receiving States to alleviate the plight of women migrant workers residing within their areas of jurisdiction,

Recognizing the importance of continued cooperation at the bilateral, regional, and international levels in protecting and promoting the rights and welfare of women migrant workers,

1. Takes note of the report of the Secretary-General on violence against women migrant workers (E/CN.4/1998/74);

2. Invites Governments, particularly of sending and receiving countries, in cooperation with relevant United Nations bodies, other intergovernmental organizations and non-governmental organizations, to undertake further research on the causes and consequences of violence against women migrant workers, including the causes ot outflow of women migrant workers, and to develop appropriate national data-collection methodologies that will generate comparable data as bases for research and analyses on the subject;

3. Encourages the Committee on the Elimination of Discrimination against Women to consider developing a general recommendation on the situation of women migrant workers;

4. Requests the working group of intergovernmental experts on the human rights of migrants, within its mandate, to consider the problem of violence against women migrant workers and to elaborate recommendations to strengthen the promotion, protection and implementation of the human rights of women migrant workers;

5. Calls upon concerned Governments, particularly those of sending and receiving countries, if they have not done so, to put in place penal and criminal sanctions to punish perpetrators of violence against women migrant workers and, to the extent possible, to provide the victims of violence with the full range of immediate assistance, such as counselling, legal and consular assistance, temporary shelters and other measures that will allow them to be present during the judicial process as well as establishing reintegration and rehabilitation schemes for returning women migrant workers;

6. Invites the States concerned, specifically the sending and receiving States, to consider adopting appropriate legal measures against intermediaries who deliberately encourage the clandestine movement of workers and who exploit women migrant workers;

7. Encourages States to consider signing and ratifying or acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as the Slavery Convention of 1926;

8. Requests the Secretary-General to submit to the Commission on Human Rights at its fifty-sixth session a comprehensive follow-up report on the problem of violence against women migrant workers, taking into account the views of States and based on the expertise and all available information from authorities and bodies within the United Nations system, intergovernmental organizations and other sources, including non-governmental organizations;

9. Decides to continue to consider the question at its fifty-sixth session under the relevant agenda item.

38th meeting
9 April 1998
[Adopted without a vote. See chap. XI.]

1998/18. Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

The Commission on Human Rights,

Recalling that all States have pledged themselves, under the Charter of the United Nations, to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recalling also General Assembly resolution 36/55 of 25 November 1981, by which it proclaimed the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,

Recalling further article 18 of the International Covenant on Civil and Political Rights, article 18 of the Universal Declaration of Human Rights, Part II, paragraphs 22 and 38 of the Vienna Declaration and Programme of Action, and other relevant international provisions,

Emphasizing that the right to freedom of thought, conscience, religion and belief is far-reaching and profound, and that it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others,

1. Takes note of the report of the Special Rapporteur on religious intolerance (E/CN.4/1998/6 and Add.1 and Add.2);

2. Condemns all forms of intolerance and of discrimination based on religion or belief;

3. Encourages the efforts made by the United Nations High Commissioner for Human Rights to coordinate in the field of human rights the activities of relevant United Nations organs, bodies and mechanisms dealing with all forms of intolerance and of discrimination based on religion or belief;

4. Urges States:

(a) To ensure that their constitutional and legal systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without discrimination, including the provision of effective remedies in cases where the right to freedom of religion or belief is violated;

(b) To ensure, in particular, that no one within their jurisdiction is deprived of the right to life or the right to liberty and security of person because of religion or belief, or is subjected to torture or arbitrary arrest or detention on that account;

(c) In conformity with international standards of human rights, to take all necessary action to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, including practices which violate the human rights of women and discriminate against women;

(d) To recognize, as provided in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the right of all persons to worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes;

(e) To ensure that, in the course of their official duties, members of law enforcement bodies, civil servants, educators and other public officials respect different religions and beliefs and do not discriminate on the grounds of religion or belief;

(f) To exert their utmost efforts, in accordance with their national legislation and in conformity with international human rights standards, to ensure that religious places, sites and shrines are fully respected and protected;

(g) To promote and encourage through the educational system, and by other means, understanding, tolerance and respect in matters relating to freedom of religion or belief;

5. Emphasizes that, as underlined by the Human Rights Committee, restrictions on the freedom to manifest religion or belief are permitted only if limitations are prescribed by law, are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, and are applied in a manner that does not vitiate the right to freedom of thought, conscience and religion;

6. Encourages the continuing efforts by the Special Rapporteur to examine incidents and governmental actions in all parts of the world that are incompatible with the provisions of the Declaration and to recommend remedial measures as appropriate;

7. Stresses the need for the Special Rapporteur to apply a gender perspective, inter alia through the identification of gender-specific abuses, in the reporting process, including in information collection and in recommendations;

8. Calls upon all Governments to cooperate with the Special Rapporteur on religious intolerance and to give serious consideration to inviting the Special Rapporteur to visit their countries so as to enable him to fulfil his mandate even more effectively;

9. Welcomes the work of the Special Rapporteur and reiterates the need for him to be able to respond effectively to credible and reliable information that comes before him, and invites him to continue to seek the views and comments of Governments concerned in the elaboration of his report, as well as to continue to carry out his work with discretion and independence;

10. Recognizes that the exercise of tolerance and non-discrimination by all actors in society is necessary for the full realization of the aims of the Declaration;

11. Welcomes and encourages the efforts of non-governmental organizations and religious bodies and groups to promote the implementation of the Declaration and invites them to consider what further contribution they could make to its implementation and dissemination in all parts of the world;

12. Decides to extend for three years the mandate of the Special Rapporteur appointed to examine incidents and governmental action in all parts of the world which are inconsistent with the provisions of the Declaration and to recommend remedial measures, as appropriate;

13. Considers it desirable to enhance the promotional and public information activities of the United Nations in matters relating to freedom of religion or belief and to ensure, as a matter of priority, the widest possible dissemination of the text of the Declaration by United Nations information centres, as well as by other interested bodies;

14. Requests the Secretary-General to provide all necessary assistance to the Special Rapporteur to enable him to carry out his mandate, to submit an interim report to the General Assembly at its fifty-third session and to report to the Commission at its fifty-fifth session;

15. Decides to continue its consideration of the question at its fifty-fifth session under the agenda item entitled "Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief".

19th meeting
9 April 1998
[Adopted without a vote. See chap. XVIII.]

1998/19. Rights of persons belonging to national or ethnic, religious and linguistic minorities

The Commission on Human Rights,

Recalling General Assembly resolution 47/135 of 18 December 1992, as well as subsequent resolutions on the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,

Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to political and social stability and peace and enrich the cultural heritage of society as a whole,

Concerned by the frequency and severity of disputes and conflicts concerning minorities, and their often tragic consequences, and that persons belonging to minorities are particularly vulnerable to displacement,

Acknowledging that the United Nations has an increasingly important role to play regarding the protection of minorities by, inter alia, taking due account of and giving effect to the Declaration,

Welcoming the inter-agency consultation of the United Nations High Commissioner for Human Rights with United Nations programmes and agencies on minority issues,

Recalling its resolution 1995/24 of 3 March 1995, in which the Commission, inter alia, decided to authorize the Sub-Commission on Prevention of Discrimination and Protection of Minorities to establish, initially for a three-year period, an inter-sessional working group consisting of five of its members, to meet each year for five working days in order to promote the rights of persons belonging to minorities,

Taking note of Sub-Commission resolution 1997/23 of 27 August 1997,

1. Takes note of the report of the Secretary-General on the rights of persons belonging to national or ethnic, religious and linguistic minorities

(E/CN.4/1998/90), as well as of the report of the Working Group on Minorities on its third session (E/CN.4/Sub.2/1997/18), and in particular the recommendations contained therein;

2. Reaffirms the obligation of States to ensure that persons belonging to national or ethnic, religious and linguistic minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;

3. Urges States and the international community to promote and protect the rights of persons belonging to national or ethnic, religious and linguistic minorities, as set out in the Declaration, including through the facilitation of their participation in all aspects of the political, economic, social, religious and cultural life of society and in the economic progress and development of the country;

4. Also urges States to take, as appropriate, all the necessary constitutional, legislative, administrative and other measures to promote and give effect to the Declaration;

5. Recommends that the human rights treaty bodies, when considering reports submitted by States parties, give particular attention to the implementation of articles relating to the rights of persons belonging to national or ethnic, religious and linguistic minorities;

6. Calls upon the Secretary-General to make available, at the request of Governments concerned, qualified expertise on minority issues, including the prevention and resolution of disputes, to assist in existing or potential situations involving minorities;

7. Requests the United Nations High Commissioner for Human Rights to continue her efforts to improve the coordination and cooperation of United Nations programmes and agencies active in the field of the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities;

8. Calls upon the High Commissioner to continue to promote, within her mandate, the implementation of the Declaration and to engage in a dialogue with Governments concerned for that purpose;

9. Calls upon all special representatives, special rapporteurs and working groups of the Commission to continue to give attention, within their respective mandates, to situations involving minorities;

10. Commends the role of the Working Group on Minorities of the Sub-Commission as an important forum for reviewing the promotion and practical realization of the Declaration, for examining possible constructive solutions to problems involving minorities, recommending further measures, as appropriate, for the promotion and protection of the rights of persons belonging to national ethnic, religious and linguistic minorities, as well as for its work achieved so far;

11. Decides to extend the mandate of the Working Group with a view to its holding one session of five working days annually;

12. Requests the Secretary-General to provide the Working Group, from within existing resources, with all the necessary services and facilities to fulfil its mandate;

13. Calls again upon States, intergovernmental organizations, United Nations bodies and non-governmental organizations to participate actively in the work of the Working Group, including through written contributions;

14. Requests the Secretary-General to submit to the Commission at its fifty-fifth session a report on the implementation of the present resolution;

15. Decides to continue consideration of this issue at its fifty-fifth session under the same agenda item.

39th meeting
9 April 1998

[Adopted without a vote. See chap. XVI.]

1998/20. A permanent forum for indigenous people in the United Nations system

The Commission on Human Rights,

Recalling the recommendations pertaining to indigenous people included in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights (A/CONF.157/23), in particular the recommendation that the establishment of a permanent forum for indigenous people in the United Nations system should be considered in the framework of the International Decade of the World's Indigenous People,

Recognizing the growing interest and concern for indigenous issues in organizations and departments of the United Nations system as documented in the report of the Secretary-General on the review of the existing mechanisms, procedures and programmes within the United Nations concerning indigenous people (A/51/493), and noting the need to ensure coordination and regular exchange of information among the concerned and interested parties - Governments, the United Nations and indigenous people - on an ongoing basis,

Bearing in mind its previous resolutions 1994/28 of 4 March 1994, 1995/30 of 3 March 1995, 1996/41 of 19 April 1996 and 1997/30 of 11 April 1997, as well as General Assembly resolutions 49/214 of 23 December 1994, 50/157 of 21 December 1995, 51/78 of 12 December 1996 and 52/108 of 12 December 1997,

1. Notes that the General Assembly, in its resolution 52/108, reaffirmed among the objectives of the Decade the consideration of the establishment of a permanent forum for indigenous people in the United Nations system, and appointed the United Nations High Commissioner for Human Rights as Coordinator for the Decade to promote its objectives;

2. Welcomes the holding in Santiago, from 30 June to 2 July 1997, of the second workshop on a permanent forum for indigenous people within the United Nations system, in accordance with Commission on Human Rights resolution 1997/30, and takes note of the report thereon (E/CN.4/1998/11 and Add.1-2), including the suggestion that the Commission on Human Rights at its fifty-fourth session should consider how to further the process of the establishment of a permanent forum for indigenous people within the United Nations system, inter alia through the drafting of concrete proposals to this effect and bearing in mind the possibility of submitting the matter to the Economic and Social Council for action;

3. Takes note of the recommendation of the General Assembly, in its resolution 52/108, that the Commission on Human Rights at its fifty-fourth session take into account the outcome of the workshop and the comments received by the United Nations High Commissioner for Human Rights from Governments, the relevant United Nations bodies and organizations and indigenous organizations in its further consideration of the possible establishment of a permanent forum for indigenous people within the United Nations system;

4. Decides to establish an open-ended inter-sessional ad hoc working group, from within existing overall United Nations resources, to elaborate and consider further proposals for the possible establishment of a permanent forum for indigenous people within the United Nations system;

5. Requests the ad hoc working group to take into account in its work the reports of the two workshops and any comments received from Governments, United Nations organizations and bodies, specialized agencies, indigenous organizations, the Working Group on Indigenous Populations, as well as such ideas as the High Commissioner, in her role as Coordinator for the Decade, may wish to present to the ad hoc working group;

6. Also requests the ad hoc working group to submit its report, including proposals, to the Commission on Human Rights at its fifty-fifth session for consideration;

7. Decides that participation in the ad hoc working group will be according to the same procedures as agreed upon for the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 and the annex attached thereto;

8. Also decides that non-governmental organizations in consultative status with the Economic and Social Council and other relevant organizations of indigenous people which have the right to participate in the working group established in accordance with resolution 1995/32 automatically be granted the right to participate in the ad hoc working group established in accordance with the present resolution;

9. Requests that the ad hoc working group meet for five working days prior to the fifty-fifth session of the Commission on Human Rights;

10. Decides to continue its consideration of this matter at its fifty-fifth session under the agenda item entitled "Indigenous issues".

39th meeting
9 April 1998
[Adopted without a vote. See chap. XXIII.]

1998/21. Tolerance and pluralism as indivisible elements in the promotion and protection of human rights

The Commission on Human Rights,

Recalling the Preamble to the Charter of the United Nations which enjoins the peoples of the United Nations to practise tolerance and live together in peace with one another as good neighbours,

Recalling also that the Universal Declaration of Human Rights affirms that education shall be directed to the full development of the human personality, the strengthening of respect for human rights and fundamental freedoms and shall promote understanding, tolerance and friendship among all nations, racial or religious groups,

Recalling further the relevant paragraphs of the Vienna Declaration and Programme of Action,

Noting that tolerance involves a positive acceptance of diversity and that pluralism encompasses the willingness to accord equal respect to the civil, political, economic, social and cultural rights of all individuals, without distinction based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recognizing that tolerance and pluralism strengthen democracy, facilitate the full enjoyment of all human rights and thereby constitute a sound foundation for civil society, social harmony and peace,

Aware that on the eve of the twenty-first century, the world is witness to historical and far-reaching transformations in the course of which forces of aggressive nationalism, absence of religious tolerance and ethnic extremism continue to produce fresh challenges,

Noting that in a multi-ethnic, multi-religious and multicultural world, no society is beyond the dangers posed by the absence of tolerance and the violence which this can breed,

Conscious that all forms of discrimination, including on ethnic grounds, are factors that promote intolerance and infringe upon human rights and fundamental freedoms, which in turn may threaten democratic pluralism and endanger harmony, peace and stability both within States and internationally,

Convinced that the guiding principles of democratic society, such as equality, the rule of law, accountability of government, the observance of human rights, respect for pluralism and the practice of tolerance, need to be actively promoted by the international community,

Recognizing that efforts to promote tolerance require cooperation by States, civil society and individuals,

Recognizing also that promoting a culture of tolerance through human rights education is an objective that must be advanced in all States, and that

the Office of the High Commissioner for Human Rights and mechanisms of the United Nations human rights system have an important role to play in this regard,

1. Condemns unequivocally all violent acts and activities that infringe upon human rights, fundamental freedoms and democracy;

2. Reiterates the obligation of all States and the international community to:

(a) Promote universal respect for and observance of all human rights and fundamental freedoms;

(b) Protect effectively the human rights of all persons belonging to national or ethnic, religious and linguistic minorities without any discrimination and in full equality before the law;

(c) Oppose all forms of discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status in order to promote tolerance and pluralism at the national and international levels;

(d) Take steps to counter all manifestations of hatred, intolerance and acts of violence;

(e) Promote and enhance tolerance, coexistence and harmonious relations between ethnic, religious, linguistic and other groups and ensure that the values of pluralism, respect for diversity and non-discrimination are promoted effectively;

(f) Promote a culture conducive to promoting and protecting human rights, fundamental freedoms and tolerance, inter alia through education leading to genuine pluralism, a positive acceptance of diversity of opinion and belief and respect for the dignity of the human person;

3. Calls upon the United Nations High Commissioner for Human Rights and her Office to:

(a) Include, in its work programmes, within overall existing resources, the promotion of tolerance, where appropriate through workshops and seminars, using mass media and non-governmental organizations and through its programme of advisory services and technical cooperation to assist countries in their national programmes;

(b) Undertake, in that regard, specific educational initiatives and public awareness activities for the promotion of tolerance and pluralism, within the programmes and activities being implemented as part of the

United Nations Decade for Human Rights Education, 1995-2005, the International Decade of the World's Indigenous People, 1995-2005 and the Third Decade to Combat Racism and Racial Discrimination, 1993-2003;

(c) Advise or assist countries, upon request, through its programme of advisory services and technical cooperation, to put in place effective safeguards, including appropriate legislation, to guarantee the full enjoyment of all human rights by all segments of their population, without discrimination of any kind;

(d) Include details of activities undertaken by the Office of the High Commissioner for Human Rights to implement the present resolution in her report to the Commission at its fifty-sixth session;

4. Calls upon the relevant mechanisms of the Commission to:

(a) Attach the highest priority to the effective promotion, at the national and international levels, of the values of democracy, pluralism and tolerance;

(b) Further study situations and conditions that promote tolerance;

(c) Continue efforts aimed at identifying commonly accepted principles and best practices to promote tolerance and pluralism;

5. Welcomes the role of civil society, particularly non-governmental organizations working at the grass-roots level, in disseminating the importance of tolerance and pluralism through their awareness-raising activities;

6. Decides to consider this question at its fifty-sixth session under the relevant agenda item.

40th meeting
9 April 1998
[Adopted without a vote. See chap. XVI.]